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COMMONWEALTH OF MASSACHUSETTS  
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June 11, 2014

Roderick MacLeish, Jr., Esquire  
Clark, Hunt, Ahern & Embry  
150 Cambridge Street  
Cambridge, MA 02140

Dear Attorney MacLeish:

I received your letter dated June 6, 2014 regarding our investigation into the death of Joshua Messier. I am disappointed that you and Ms. Brown have decided not to meet with us. In prior phone conversations with my office you raised questions about our investigation. I think that a meeting would have been helpful to both you and Ms. Brown in correcting any misconceptions that you may have. This office assigned highly experienced staff members to investigate Mr. Messier's death, and after a thorough months-long investigation and legal analysis, the investigators came to the conclusion that there was insufficient evidence to proceed on criminal charges. Assistant District Attorney Thomas Flanagan was assigned to conduct this investigation, and the commanding officers of my State Police unit worked with him, to gather and examine the facts and evidence.

Some history of this case is in order. On May 5, 2009, shortly after 12:30 AM, State Police Detectives assigned to the Plymouth County District Attorney's Office responded to the Bridgewater State Hospital facility immediately upon being advised of Mr. Messier's death. In all, eleven (11) State

Police personnel, including virtually my entire State Police Homicide investigation unit assisted in this effort, working on this investigation to interview witnesses and gather evidence.

The State Police Detectives from my office interviewed approximately sixty (60) witnesses at Bridgewater State Hospital. These interviews included twenty-eight (28) Department of Corrections' staff members regarding their observations on the night of the incident, including all staff involved in the restraint of Joshua Messier. Thirty-two (32) inmates in the Bridgewater State Hospital facility were interviewed about the incident. They interviewed Ms. Brown who indicated her concern regarding her son's demeanor during her visit shortly before this incident. All existing video footage pertaining to this incident from the security cameras at Bridgewater State Hospital were secured and preserved as evidence by the State Police. Potential physical evidence was collected and the scene was fully documented by the State Police Crime Scene Services Section.

Additionally, hundreds of pages of psychiatric, medical and training records pertaining to Mr. Messier and the corrections officers were obtained and reviewed by ADA Flanagan. The video footage was also reviewed in painstaking detail. Scene and autopsy photographs were obtained and examined.

In February of 2010, the Medical Examiner who conducted the autopsy, Dr. Mindy Hull, determined that the cause of death was "cardiopulmonary arrest during physical restraint, with blunt impact of head and compression of chest, while in agitated state." She found the cause of death to be "homicide (restrained by corrections officers during agitated state)". Dr. Hull reviewed and explained her autopsy findings in greater detail during a May 4, 2010 interview at the Medical Examiner's Office with ADA Flanagan and the two top-ranking State Police investigators assigned to my office.

During that meeting, the injuries observed on the body of Mr. Messier were detailed by Dr. Hull. Witnesses described that Mr. Messier violently assaulted one of the corrections officers by punching him in the face and head. The subsequent struggle led out into the hallway where they fell to the concrete floor, as shown on Bridgewater State Hospital surveillance video. Dr. Hull advised the investigators that

the injuries observed on Mr. Messier's head and body were consistent with a physical altercation and fall, such as the fist fight that Mr. Messier reportedly initiated with the guard, and the subsequent reported fall to the concrete hallway floor. There was no evidence on Mr. Messier's body specifically indicating that any kind of weapon had been used on Messier by the corrections officers. Dr. Hull was again shown the restraint video by ADA Flanagan, frame by frame, and was asked whether any of the actions of the corrections officers during the restraint could be determined, in her expert opinion, to be a cause of death. Dr. Hull stated that no specific actions of any corrections officers could be determined to be a cause of death. Additionally, my investigators were advised that a number of factors existed which put Mr. Messier at an increased risk of sudden death. These coexisting factors included Mr. Messier's diagnosis of schizophrenia, his obesity, his extreme state of agitation as he resisted the guards, and the high level of the anti-psychotic medication Clozapine in his system on the night of his death. Ultimately, Dr. Hull advised that it was her opinion that it was the entire incident on the night of May 4, 2009, including these four factors, as well as, Mr. Messier's reported assaultive behavior toward the guards, the corrections officers' efforts to restrain him, and Mr. Messier's conduct in resisting the guards efforts to restrain him, which led to Mr. Messier's extremely agitated state, his cardiopulmonary arrest, and ultimately his death.

The expert opinion evidence from the doctor, who examined the body of Mr. Messier, as well as the medical records, witness statements, and Bridgewater State Hospital video footage of the incident, were critical to our determination that there was insufficient evidence to charge the corrections officers criminally for Mr. Messier's death. Based on the law pertaining to homicide in Massachusetts, no specific actions of any of the corrections officers could be determined as the cause of Mr. Messier death. Causation is essential in charging a person criminally for another's death. As defined in the Massachusetts Model Jury Instructions on Homicide, approved by the Massachusetts Supreme Judicial Court, an act which is the cause of death is defined as "an act which in a natural and continuous sequence results in death, and without which death would not have occurred." In consideration of all the facts and circumstances surrounding the death of Joshua Messier, the Plymouth County District Attorney's Office



determined that there was insufficient evidence to charge the corrections officers criminally for Mr. Messier's death. There was also insufficient evidence to charge anyone criminally for their failure to act, that is, that corrections officers recognized the medical status of Mr. Messier, intentionally decided not to seek medical assistance for him and that this caused his death.

In June of 2010, ADA Flanagan met with the victim's mother. At her request, her then civil attorney Benjamin Novotny of Lubin and Meyer was present. ADA Flanagan explained to Ms. Brown in detail at the face to face meeting all the facts determined through the investigation, and explained why there was insufficient evidence which precluded criminal charges. He expressed his condolences to Ms. Brown for her loss but explained that our decision was, as it must be, based on the law and the evidence. ADA Flanagan, who works primarily on Brockton Illegal Firearms and homicide cases, prosecuted and convicted a Brockton Police officer for extortion and larceny during the same general time period as the Messier investigation. ADA Flanagan has never worked with Bridgewater State Hospital Corrections Officer's on criminal investigations either before or since the Messier investigation.

In November of 2013, this office received a press inquiry regarding the Messier death investigation. We gladly provided written responses to the press inquiry. To be perfectly clear -- the written response we provided categorically does not reflect any statement by my office that Dr. Hull "retracted her finding of homicide", "changed her opinion", or "pulled back from her findings." Nor has my office ever indicated that.

As Secretary Andrea Cabral addresses in her Draft Report of 3.01.14, "The OCME distinguishes homicide (death at the hands of another) from suicide (death by one's own hand) and accidental death (misadventure). The finding does not imply culpability, as that determination is left to the District Attorney". As an experienced attorney, you must of course recognize that a finding of homicide by the medical examiner is in no way determinative of criminal culpability.

I fully appreciate my duty to investigate potential homicides; therefore, in the spring of this year I directed my staff to again review the medical evidence on cause of death in this matter. The State Police investigators and prosecutors assigned to the Messier investigation met separately with Dr. Mindy Hull and the Chief Medical Examiner, Dr. Henry Nields, to once again go over the autopsy findings, and Dr. Hull's opinion and conclusions regarding the cause of Mr. Messier's death. Dr. Hull's conclusions remained consistent with those she memorialized in her February 2010 autopsy report, and further detailed in her May 2010 meeting with my investigators. After again reviewing the video, Dr. Hull once again stated that no specific actions of any corrections officers could be determined to be a cause of death but that it was the entire incident on the night of May 4, 2009, including four factors (diagnosis of schizophrenia, his obesity, his extreme state of agitation as he resisted the guards, and the high level of the anti-psychotic medication Clozapine in his system), as well as, Mr. Messier's reported assaultive behavior toward the guards, the corrections officers' efforts to restrain him, and Mr. Messier's conduct in resisting the guards efforts to restrain him, which led to Mr. Messier's extremely agitated state, his cardiopulmonary arrest, and ultimately his death. Dr. Nields concurred with this opinion. Additionally, Dr. Hull examined a straight or linear abrasion on the right side of Mr. Messier's neck, reported in the press as a "ligature mark," and opined after examination of the neck and reflection of the skin in the area of that mark, that it was not a ligature mark but rather a superficial abrasion or scratch. Finally, while both Drs. Nields and Hull cite the attempt to restrain him as a factor, neither could rule out that Mr. Messier's death could have occurred even in the absence of the restraint procedure.


On May 15, 2014, we received your letter indicating that you represent Mr. Messier's mother and would like to meet with us to discuss our investigation into the death of Joshua Messier. As indicated previously, we were happy to meet with you to discuss the case. We also urged you to provide us with any evidence relevant to our determination, including evidence on the cause of death. You indicated that you have no additional information on the issue of causation. The additional issues that you raised in your letter are not relevant to the essential element of causation and do not change the factual and legal

conclusion that the evidence here is insufficient to charge the corrections officers criminally for Mr. Messier's death.

As the elected District Attorney in Plymouth County, my office has jurisdiction over homicide investigations. We typically handle over 300 death investigations a year. My office has investigated and prosecuted police officers, prison and jail guards, and in recent years, even a prosecutor from another county. Without exception, we have in every case followed the evidence and applied the law fairly and in the interest of justice and public safety, to the best of our ability. That is what I have demanded from my prosecutors during my tenure as District Attorney, and that is what has been done. After a review of the facts and circumstances in this case, there is insufficient evidence to proceed on criminal charges against the corrections officers involved in the restraint of Joshua Messier.

I have confidence in the investigators and prosecutors from my office and in the conclusions they reached in this matter. They are all hard working public servants who have thoroughly and thoughtfully investigated this matter while adhering to their duty to follow the law. We remain open to meeting with Ms. Brown again, and discussing our investigation into her son's death.

Sincerely,



TIMOTHY J. CRUZ  
District Attorney  
Plymouth County

TJC:krs

cc: Attorney General Martha Coakley